IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6563 of 1992

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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BANK OF INDIA EMPLOYEES' UNION
OFFICE OF BANK OF INDIA - Petitioner(s)
Versus
BANK OF INDIA - Respondent(s)

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Appearance :
MR GIRISH PATEL for Petitioner
MR MEHTA for M/s. NANAVATI ASSOCIATES for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
23rd October, 2007

ORAL JUDGMENT

The petitioner, a Labour Union, has preferred the present petition under *Article* 227 of the Constitution of India against the judgment and award dated 19th July, 1991 passed by the Central Industrial

Tribunal, Ahmedabad in Reference [ITC] No. 29 of 1988. By the *impugned* award, challenge to the order of dismissal dated 28th June, 1985 made by the respondent-Bank of India [hereinafter referred to as, "***the Bank***"] against the workman B.N Mehta, a Clerk in the Gandhi Road Branch of the Bank, has been rejected.

Mr. Patel has appeared for the Union. He has challenged the order of dismissal from service made against the workman on three grounds. He has submitted that in the incident of large scale fraud upon the Bank perpetrated in the year 1981 in respect of loan advanced to a customer of the Bank – one Mr. Pravinbhai Panchal several officers of the Bank, including the Branch Manager, award staff, etc. were found involved. As far as the workman Mr. B.M Mehta is concerned, he was the award staff i.e, a workman governed by the bipartite settlement. There were allegations against him in respect of accepting illegal gratification to facilitate advancement of loan to the said Pravinbhai Panchal and of tampering and falsification of the Bank record. Investigation into the matter was entrusted to the Central Bureau

of Investigation. The Central Bureau of Investigation, after making preliminary investigation, under its communication dated 5th November, 1983 submitted its report and recommended that regular departmental action be taken against the delinquent workman. Accordingly, disciplinary proceeding was initiated against the workman. By Order dated 28th June, 1985, he was dismissed from service. The said order of dismissal from service was the subject matter of challenge before the Tribunal. The Tribunal has upheld the order of dismissal from service.

Mr. Patel has submitted that pending investigation by the Central Bureau of Investigation, the workman was, by order dated 10th January, 1983, suspended from service. It was stipulated that during the period of suspension, the delinquent would be paid subsistence allowance equal to one-third of his pay and allowances for the first six months, and thereafter equal to one-half of his pay and allowances. Mr. Patel has submitted that the service conditions of the workman were governed by a bipartite settlement. He has submitted that under the

said bipartite settlement, particularly under Clause 19.4 thereof, in such cases, the period of suspension was required to be treated as period on duty and the workman was entitled to full pay and allowances. He has also submitted that in case of proof of guilt, at the most, the delinquent could be discharged from service with three months' pay and allowances *in lieu* of notice. The order of dismissal from service, therefore, requires to be set-aside. Instead, the workman be discharged from service with three months' pay and allowances *in lieu* of notice.

He has next contended that after the disciplinary proceeding against the workman was completed, the Zonal Officer - the disciplinary authority had recommended that the workman be dismissed from service. However, in absence of the Zonal Officer-Mr. Shroff, one Assistant Manager Mr. Patel was holding the charge and had recommended that considering the mitigating factors, the punishment of reduction in pay for period of two years be imposed upon the workman. The said recommendation was answered on 27th June, 1985. However, by Order dated 28th June, 1985, the workman was dismissed from

service. He has submitted that under the relevant rules, the disciplinary authority was required to consult the Vigilance Officer. The aforesaid exchange of communication between the disciplinary authority and the vigilance officer was required to be furnished to the workman. The aforesaid recommendations and the reply of the vigilance officer were not furnished to the workman until it was demanded before the Tribunal in pending Reference. Mr. Patel has submitted that the order of punishment made by the disciplinary authority was confirmed by the appellate authority. Against the order of the appellate authority, the workman preferred review application before the Chairman. Though the said review application was not entertained, as it was not maintainable, the disciplinary authority did make recommendation of imposing lesser punishment upon the workman. In the circumstances, Mr. Patel has submitted that the workman who was an award staff and was functioning at the behest of the Branch Manager, the punishment of dismissal from service imposed upon the workman is disproportionate to the guilt proved against him.

I am afraid, I am unable to agree with any of the submissions made by Mr. Patel. The bipartite settlement relied upon by Mr. Patel and particularly Clause 19.4 thereof deals with a situation where steps to prosecute the employee have been taken but he is not put to trial within one year from the date of commission of offence. The management then deals with him as if he had committed an act of *"gross misconduct"* or of *"minor misconduct"*. In that case, the employee is deemed to have been on duty during the period of suspension; if any, and shall be entitled to full wages and allowance and to all other privileges for such period. It further provides that in the event, the management decides not to continue the delinquent employee in service, he would be liable only for termination with three months' pay and allowances in lieu of notice. Thus, Clause 19.4 can be invoked only in a case where prosecution is lodged but the delinquent employee is not put to trial. In the present case, as recorded hereinabove, the investigation into the alleged fraud was entrusted to the Central Bureau of Investigation. However, it has not come on record that prosecution

was lodged against the workman or that any step was taken to lodge the prosecution. The registration by the Central Bureau of Investigation of a case entrusted to it for investigation would not amount to a step towards prosecution. Reliance placed on the aforesaid clause 19.4, therefore, is uncalled for. The claim for full pay and allowances and privileges for the period of suspension and simple termination of service with three months' pay and allowances in lieu of notice requires to be rejected outright.

As to the correspondence between the disciplinary authority and the vigilance officer of the Bank, it should be noted that as submitted by Mr. Patel, the disciplinary authority was required to consult the vigilance officer. The exchange of opinion, therefore, would not mean that the disciplinary authority was influenced by the opinion of the vigilance officer or that the workman was entitled to copy of such communication. Considering the charges proved against the workman, though he may be one of the many delinquents involved in the incidence of fraud in question, the order of dismissal from service cannot be said to be too harsh

or disproportionate to the guilt proved against the workman. As to the recommendations made by the disciplinary authority in connection with the review application made by the workman, I am of the opinion that the said recommendations are of no consequence. The application for review was made to the Chairman of the Bank against the order of the appellate authority. The opinion of the disciplinary authority against the order of disciplinary authority that too when it was uncalled for has no significance. Besides, the said review was not entertained as there was no provision for review of the order of the appellate authority.

No other contention is raised before me. No interference is warranted. The petition is dismissed. Rule is *discharged*. The parties will bear their own costs.

{Ms. R.M Doshit, J.}

*Prakash**